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T.D

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
07/24/99	05/17/99	RIERA	M 144-198

SEIDEL GONDA LAVORGNA & MONACO
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SUITE 1800
PHILADELPHIA PA 19102

IM52/0405

EXAMINER

TRAN, T

ART UNIT	PAPER NUMBER
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1741

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DATE MAILED: 04/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/242,191

Applicant(s)
Riera

Examiner
Thao Tran

Group Art Unit
1741



☒ Responsive to communication(s) filed on Mar 2, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-18 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-18 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6, 11

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Response to Amendment

1. This is in response to the Amendments received on November 20, 2000. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.
2. Claims 1-18 are currently pending in this application. Claims 13-18 have been newly added.

Claim Rejections - 35 USC § 103

3. Claims 1, 3-5, 9, and 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hideki et al. (JP 63277778).

The rejection of claims 1, 3-5, 9, and 11-12 is as set forth in the previous Office Action of November 20, 2000 and incorporated herein.

In regards to claims 13-18, the rejection is as set forth for claims 1-5 and 8 in the previous Office Action.

4. Claims 1, 3-13, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larson et al. (US Pat. 4,865,747).

The rejection of claims 1 and 3-12 is as set forth in the previous Office Action of November 20, 2000 and incorporated herein.

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In regards to claims 13 and 15-18, the rejection is as set forth for claims 1, 3-5, and 8 in the previous Office Action.

3. Claims 1-2, 6-9, 13-14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faunce et al. (US Pat. 438,579).

The rejection of claims 1-2 and 6-9 is as set forth in the previous Office Action of November 20, 2000 and incorporated herein.

In regards to claims 13-14 and 18, the rejection is as set forth for claims 1-2, and 8 in the previous Office Action.

Response to Arguments

5. Applicant's arguments filed on February 26, 2001 have been fully considered but they are not persuasive.

The examiner would like to thank applicant for pointing out the Japanese tradition of writing the surname first, on page 7 of the Remarks. Therefore, in this response, Takahashi is being used in lieu of Hideki.

Throughout the Remarks, applicant emphasizes the features of the present invention that are distinct from the prior art are all characteristics of the current applied to the device or the resulting magnetic fields or vector component of the resultant field. Applicant is hereby reminded that the manner by which an apparatus is operated has been held insufficient to patentably distinct over prior art. See *In re Venner*, 120 USPQ 193, 194 (CCPA 1958). Furthermore, function and

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intended use of the device have been held to have little patentable weight when an apparatus claim is being considered for its patentability. See *In re Danly*, 120 USPQ 528, 531 (CCPA 1959); *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

For example, on page 7 of the Remarks, applicant contends that Takahashi differs from the instant invention because the instant invention provides a device in which both the amplitude of the field and the angular velocity of the direction of the field vary over time; whereas Takahashi's device produces a substantially constant amplitude. The examiner maintains that the manner by which an apparatus is operated has been held insufficient to patentably distinct over prior art. See *In re Venner*, 120 USPQ 193, 194 (CCPA 1958).

On page 9 of the Remarks, applicant points out that Larson does teach the current amplitude, frequency, and form. Applicant is correct in that Larson does teach the current frequency. However, Larson does not teach a specific form of the current applied to the device, be it sinusoidal or angular. And again, the rejection of the claims is maintained for reason cited above.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao Tran whose telephone number is (703) 306-5698. The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathryn Gorgos, can be reached on (703) 308-3328. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0661.

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March 30, 2001


Kathryn Gorgos
Supervisory Patent Examiner
Technology Center 1700